

COURT NO. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 748 of 2001

U.P. State Road Transport
Corporation,

..... **Appellant.**

Versus

Himanshu and others.

..... **Respondents**

Sri A.N. Sharma, learned counsel for the appellant.

Coram: Hon. P. C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the U.P. State Road Transport Corporation under Section 173 of the Motor Vehicles Act, 1988 (in short the Act) against the judgment and Award, dated 15-3-2001, passed in M.A.C. No. 205 of 1999, Himanshu and another Vs. U.P.S.R.T.C. and another, by the Motor Accident Claims Tribunal/District Judge Udham Singh Nagar (*hereinafter referred to as the Tribunal*), whereby the learned Tribunal has awarded a sum of Rs. 5,26,160/- along with interest @ 10% per annum in favour of the claimants as against the Opposite Party No.2-appellant, as mentioned in the impugned judgment and award. Aggrieved, the appellant-U.P.S.R.T.C. has assailed the impugned judgment and award mainly on the ground that the findings are not based on evidence and income of the deceased has not been properly worked out while assessing the quantum of award.

Brief facts of the case are that the claimant-respondents filed a claim petition under Section 166 of the Act claiming Rs. 28,70,000/- for the death of their father Shiv Chandra Arora in a motor accident, with the allegations that on 17.6.99, the deceased was going by his motor cycle No. UP 04-6945, from Kashipur to Rudrapur accompanied by his wife as pillion rider. As

soon as the deceased went ahead of Bhakhara bridge, a Roadways Bus No. UGP-4299 driven rashly and negligently by its driver came from the opposite direction badly hit the motor cycle and crushed both of them and the bus entered into a Khadd, with the result Shiv Chandra Arora and his wife succumbed to their injuries on the spot. The F.I.R. of this accident was lodged by an eye witness Ramesh Dhingara in the Police Station. Consequently, a case under Sections 279, 304 A and 427 I.P.C. was registered. The deceased was alleged to be 45 years of age, employed as Sales Officer in the U.P. Agro Sales Kashipur and was earning Rs. 14,000/- at the time of his death. It is also alleged that the deceased had income from agriculture as well. It has been mentioned that due to death of the deceased, the claimants have suffered loss worth Rs. 27,70,000/-, hence the claim petition.

The Opposite Party No.1-appellant contested the case and filed its written statement. It has denied that the offending bus was being driven rashly and negligently by its driver, rather the speed of the bus was normal. The accident was result of sole negligence on the part of the deceased. It is pleaded that the deceased tried to overtake a Truck and in a hurry, the deceased lost control of motor cycle and dashed against the bus. Plea of necessary party was also raised. The O.P. No.2- respondent no.3, the driver of the bus, filed his separate written statement and has taken the same as already taken by the appellant-O.P. No.1.

On the pleadings of the parties, the learned Tribunal framed as many as four issues in the case. Issue No.1 related to rash and negligent driving of the bus resulting into death of the deceased on the date and time of accident. Issue No.2 related to rash and negligent driving by the driver of motor cycle in question/deceased. Issue Nos. 3 and 4 related to the relief.

Claimant-appellants filed documentary evidence and also examined P.W. 1 Indra Lal and P.W.2, Ramesh Dhingara, the alleged eye witness of the accident. On the other hand, the Opposite Parties produced the driver, Daya Kishan, as D.W.1 in oral evidence; but no document has been filed on behalf of the O.Ps.

The learned Tribunal after hearing both the parties and considering the evidence on record, took Issue Nos. 1 and 2 together and found that the Opposite Parties have not even lodged report of the accident and concluded that the driver of the bus D.W.1 has been facing trial in criminal court and he had not lodged any report against the offending motor cycle. Ultimately, the learned Tribunal has held that the accident in question was the result of the rash and negligent driving by the driver, Daya Kishan. On Issue Nos. 3 and 4, the learned Tribunal after considering the oral and documentary evidence found that from the salary certificate of the deceased (29-C/7) it is clear that the deceased was getting Rs. 5,273/-. After deducing, $\frac{1}{3}$ rd of it, the Tribunal conducted that the monthly loss of dependency comes to Rs. 3515/- and thus, annual loss of dependency comes to Rs. 42180/-. The deceased was found to be age 45 years, therefore, multiplier of 12 was applied by the Tribunal and the Tribunal has held that the claimants are entitled to get Rs. 5,06,160/- for loss of income as a result of death of the deceased. In addition to it, the Tribunal has awarded sum of Rs. 20,000/- towards loss of love and for mental suffering and ultimately, the learned Tribunal has also awarded interest on the compensation amount at the rate of 10% from the date of filing of claim petition. It has also been ordered that in case, the Opposite Party No.1-appellant does not pay the entire amount within two months from the date of impugned order, the claimants shall be entitled to get interest @ 12% annum, as mentioned in order.

The learned counsel for the appellant has submitted that the finding of the learned Tribunal that the accident in question was the sole rashness and negligence on the part of the driver of the bus is erroneous and not based on evidence on record. It has also been contended that the quantum of award is excessive and not based on the settled principles of law.

So far question of rash and negligence on the part of driver of the offending bus or on the part of the deceased himself is concerned, we have considered the evidence available on record. There is evidence of eye witness of the accident, P.W.2 Ramesh Dhingara, who has been produced on behalf of the claimants-respondents. This witness has stated on oath that on 17.6.99, he was going by his car to Rudrapur and the deceased was coming from his motor cycle accompanied by his wife. He had interacted with him near Bajaj Dhram Kanta. According to him the Roadways bus was coming in high speed and rashly and negligently driven by its driver. He had seen the bus falling down in the **Khadd** after crushing the deceased. This witness himself has lodged the F.I.R. of the accident. The witness was cross-examined on behalf of the appellant. He has remained unshaken on all the material points as stated by him in his examination-in-chief. Moreover, a criminal proceeding is going on against the driver of the bus on the report lodged by this witness. Had there been no negligence on the part of the driver of the bus, he must have lodged a report of the accident. From all these facts and circumstances, it is fully established on record that the driver of the bus himself was driving the vehicle rashly and negligently. The learned Tribunal has rightly found the driver of the bus responsible for the accident resulting in the consequent death of the deceased. We do not find any reason to take a different view of this point. The contention of the appellant is not at all tenable on this score.

As regards, determination of the income of the deceased and assessment of compensation, we find that the salary

certificate relied on and produced by the clamant-respondents is on record as paper no. 29-C/7. From the perusal of this certificate it is clear that the deceased was getting salary of Rs. 5,273/- per month from his employment. As regards alleged income from the agriculture, we find that no documentary evidence has been led by the appellants. Moreover, even if the deceased was having any income from the agriculture, the same has not been taken away on his death. The deceased was admittedly an employee and it has not been shown that he himself had occasion to engage himself in the agriculture work. We are of the opinion, that the learned Tribunal has rightly considered the evidence on record in holding that the deceased would have been spending amount of Rs. 3515/- per month towards his family and taking into account the age of the deceased 45 years, has applied the multiplier of 12 for assessing the quantum of award. The Apex Court in the case of ***“United India Insurance Co. Ltd. etc. etc. Vs. Patricia Jean Mahajan & Ors, etc. etc.”*** (2002(2) Apex Court Judgment, 100 (S.C.) while considering the provisions of Second Schedule of the Act, in paragraph 22 has observed that ***“ordinarily while awarding compensation, the provisions contained in the Second Schedule may be taken as a guide including the multiplier, but there may arise some cases, as one in hand, which may fall in the category having special feature or facts calling for deviation from the multiplier usually applicable.”*** In our opinion, the multiplier of 12 applied by the Tribunal was just and proper in the circumstances of the present case. The Tribunal has rightly held that the claimant-respondents are entitled to get compensation worth Rs. 5,26,160/-. The contention of the appellant is not tenable on the point of quantum of compensation.

However, the Tribunal has awarded 10% interest on the compensation amount. In our opinion, it will be just and proper to meet the ends of justice to reduce the rate of compensation to 9% per annum instead of 10%, as ordered by the learned Tribunal.

Accordingly, to this extent, the order the learned Tribunal is liable to be modified.

In the result, the appeal fails on merit and is dismissed. The impugned order is modified as observed above. No order as to costs.

(B. S. Verma, J.)

(P.C. Verma, J.)

19-08-2004
RCP